IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

BABULAL V. THE STATE OF RAJASTHAN

D.B. CRIMINAL APPEAL NO.433/2001
under Section 374 (2), Cr.P.C.,against
the Judgment dated 20-7-2001 passed
by the learned Sessions Judge,
Jodhpur in Sessions Case No.10/2001.

DATE OF JUDGMENT :::: 02-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. B.S.Rathore, for Appellant (s).
Mr. J.P.S. Public Prosecutor.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

This appeal has been filed by accused Babulal against the judgment of District & Sessions Judge, Jodhpur in Sessions Case No.10/2001 dated 20th July, 2001.

Sangram Ram lodged First Information report at Police Station Bhopalgarh, on 14.10.2000, at about 10.00 P.M., stating therein that at about 9.00 P.M., he was going to his home from Bus Stand, on reaching Nadsar Circle, he had seen Moola Ram and Babu Lal at the shop of Moola Ram. He heard blast of the transformer after 15-20 minutes causing discontinuance of power supply. He had taken torch to reach to the place of transformer, on the way he had seen body of the deceased in front of Mohan Ram's workshop, when the torch was focused on the body, it was found that the same is of Mula Ram. Immediately he shouted, where is Babu Lal. At that time, Narayan Ram and Jawan Ram came on the spot and stated that Babuda (Babulal) is lying near transformer. On minute verification of the spot, it was found that the deceased Mula Ram was pulled out from the workshop of Babulal to place him on the road side pavement.

First Information Report was registered under Sections 302 and 201, IPC, bearing FIR No.159. After registering the case, investigation was conducted and thereupon charge sheet was filed in the Court of Judicial Magistrate, Pipar city and thereupon, case was committed to the District & Sessions Court, Jodhpur. The trial Court framed charges against the accused under Section 302, IPC. Appellant accused denied the

charge and claimed trial.

In the trial, 21 witnesses were examined and 58 documents were exhibited from the prosecution side. The accused was examined under Section 313, Cr.P.C.. From defense side, no defence witness was examined. The trial Court considered the material available on record and found that there exists circumstantial evidence to support the case of the prosecution. In that regard, trial Court, considered ten circumstances, which proved prosecution case beyond doubt. The accused was thus, convicted under Section 302, IPC, and sentenced for life imprisonment.

Learned counsel for the appellant, assailing the judgment, submitted that the accused was falsely implicated in the case as the statement of Bhanwarlal (P.W.21), makes it clear that when the weapon was recovered from lock and key, neither the key, nor the handle of the door were having any blood impression. It was urged that as per the report submitted by the Doctor, the hands and clothes of the accused were blood stained, therefore, the story was fabricated against accused Babulal, without there being any circumstantial evidence to prove the case of prosecution. It was further argued that accused Babulal was not involved in the case as injuries sustained by the deceased were

attributed by two persons, whose faces were covered by cloth. Referring to the statement of the accused, under section 313, Cr.P.C., learned counsel for the appellant submitted that though incident took place in the workshop of Babulal, but the injuries were inflicted by two unknown persons who ran away after the incident and accused Babulal's hands and clothes were found blood stained, for the reason that the accused tried to save deceased Babulal while deceased was being pulled out of his workshop.

Per contra, learned Public Prosecutor submitted that circumstantial evidence available on record are sufficient to prove the guilt of the accused Babulal. It was submitted that all the circumstantial evidence were considered by the learned trial Court in detail . It was urged that deceased was last seen with accused Babulal as admitted by Babulal in his statement under Section 313, Cr.P.C. Learned Public Prosecutor further submitted that the statement of PW21 Bhanwarlal was discussed at length by the learned trial Court to find out circumstances, under which key and handle were not having any blood impression. It was submitted that accused first inflicted injuries on the deceased Mula Ram which was found to be sufficient to cause death. Referring to the statement of PW 18 - Dr.Deepak Mathur, it was submitted that it is after death of the deceased

that he was given electric shock. Thus, if two unknown persons had inflicted injuries on the deceased and ran away, then injuries from the electric shock could not have been noticed in the medical examination. It was vehemently argued that the accused caused injuries to the deceased, thereafter, to save himself, he had tried to burn the body of deceased by electric shock and even pulled out the deceased, having clear impression on the spot. In these circumstances, learned Public Prosecutor supported the judgment of the trial Court.

We have heard learned counsel for the parties and given our thoughtful consideration to the material available on record. The prosecution has rested its case on the circumstantial evidence which was discussed by the learned trial Court at length. The learned trial Court discussed ten grounds to judge whether there is sufficient circumstantial evidence to prove the guilt of the accused. We have carefully examined those circumstances we well as the arguments of the learned counsel for the parties.

The deceased was last seen with accused Babulal and this fact has been admitted, even by the accused Babulal in his statement under Section 313, Cr.P.C. The other fact taken note was that accused Babulal was alone with the deceased and the place of occurrence is also workshop of Babulal, from where

deceased was pulled out around 21 ft. to bring the body outside workshop. Trial Court further noticed that accused had stated that injuries were inflicted by two unknown persons, who immediately ran away then why body was pulled out from Babulal's workshop, and as to how deceased received injuries from electric shock. In the statement under Section 313 the accused has not stated that those two unknown persons had given electric shock to the deceased. Thus, statement of accused was found to be false. The trial Court further considered all other circumstances to arrive at the conclusions.

PW 18 Dr.Deepak Mathur has stated that the deceased received six injuries, out of which first three injuries were fatal, sufficient to cause death. All the three injuries were inflicted by sharp weapon and deceased Mula Ram died out of those injuries. Three more injuries out of electric shock were caused after death. In the cross-examination, PW 18 Dr. Deepak Mathur was was not asked anything on this aspect. The other important aspect noticed by trial Court that accused's clothes were blood stained and this fact was admitted by the accused in his statement under Section 313. It was also noted that even shoes of accused were having human blood on it. Therefore, taking not of circumstantial evidence available on record and false defense of accused, the case of the prosecution was found to be proved.

So far as the argument of the learned counsel for the appellant that while recovering weapon , the key and handle were not having blood on it. In that regard, statement of Bhanwar Lal (P.W.21) was referred to show admission of the facts narrated above. In that respect, we have considered the material on record and find that the circumstantial evidence available on record suggests that the accused first inflicted three blows on the neck of the deceased which were sufficient to cause death. As per the statement of Dr. Deepak Mathur, deceased died due to first three injuries suffered from a sharp weapon. The accused after inflicting three injuries, first placed weapon at the safe place and thereupon to save himself, he pulled out deceased and caused three more injuries by electric shock. While pulling the body, the accused got blood on his hands. Thus, blood impression on the key as well as handle did not come. This aspect was discussed, even by the learned trial Court, by taking note of all the circumstantial evidence available on record, we are not inclined to take different view, because circumstances available on record, prove the guilt of the accused beyond doubt.

Learned counsel for the appellant has not challenged finding of the trial Court on any other ground, more so, when learned trial Court recorded its finding after taking note of ten

circumstances to find out the truth. The circumstances available on record were discussed at length to arrived at a conclusion.

In the case of Joseph v. State of Kerala, reported in 2000 Cri.L.J. 2467, the Apex Court held as under :-

> "13. Taking advantage of the discrepancies pointed out by the Sessions Judge, the learned counsel for the appellant also ried to contend that the evidence of Pws-11 to 14 is not trustworthy. It is not that every discrepancies or contradiction that matters much in the matter of assessing the reliability and credibility of a witness or the truthfulness of his version. Unless the discrepancies and contradictions are so material and substantial and that too are in respect of vitally relevant aspects of the facts deposed, the witnesses cannot be straightway condemned and their evidence discarded in its entirety. On going through the entire evidence of Pws-11 to 14, we are unable to come to the conclusion that they are not speaking the truth or that they cannot inspire confidence in the mind of any reasonable person or authority to adjudge disputed questions of fact, so as to eschew entirely their evidence from consideration, whatsoever."

In the aforesaid case also, accused was convicted, based

on circumstantial evidence, though certain discrepancies were pointed in regard to the evidence of Pws. 11 to 14. It was argued that evidence of Pws. 11 to 14 are not trustworthy. The Hon'ble Apex Court has specifically taken note of this aspect of the matter and held that every discrepancy or contradictions are not material unless they are substantial and that too in respect of vitally relevant aspects of the facts deposed. It was held that witness cannot be straightway condemned and their evidence discarded in its entirety.

In the present case, even the learned counsel for the appellant could not show any discrepancy or contradiction in the statement of witness, other than one circumstance that key and handle were not having blood impression which fact has already been explained properly by the trial Court and finding recorded in that regard, has not been challenged on any other ground, more so, material on record proves the guilt of the accused beyond doubt.

In the case of Shivu v. Registrar General, High Court of Karnataka, reported in (2007) 4 SCC 713, Apex Court held :-

> "**9.** Learned counsel for the appellant State on the other hand submitted that that the

circumstances highlighted clearly establish the guilt of the accused and no exceptions can be taken to the reasons indicated by the trial court in the well-reasoned judgment. The evidence has also been analysed in great detail by the High Court and, therefore, no question of any interference is called for with the conviction recorded. So far as the sentence is concerned, it is pointed out that the accused persons are hardened criminals. They had made earlier attempts of rape on two different girls i.e., daughters of PW 7 and PW 1.

12. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan, (1977) 2 SCC 99; Eradu v. State of Hyderabad, AIR 1956 SC 316; Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330; State of U.P. v. Sukhbasi, 1985 Supp. SCC 79; Balwinder Singh v. State of Punjab, (1987) 1 SCC 1 and Ashok Kumar Chatterjee v. State of M.P., 1989 Supp. (1) SCC 560) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bharat Ram v. State of Punjab (AIR 1954 SC 621), it was

> laid down that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt."

In the said case also, prosecution established its case by cogent evidence and testimonies of witnesses.

The case in hand is having circumstantial evidence to prove guilt of the accused beyond doubt. Thus, persuaded by judgments of the Apex Court, cited above, we have no hesitation to hold that the reasons given by the trial Court regarding guilt of the accused based on circumstantial evidence need no interference. Hence the appeal filed by the accused is dismissed and accordingly conviction of the accused under Section 302, IPC, is maintained and the order of sentence passed by the trial Court is affirmed.

(MUNISHWARNATH BHANDARI)J.(BHAGWATI PRASAD)J

scd.